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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,494	11/14/2003	Paulette J. Miller	LIT.01	9184
25871	7590	05/08/2006	EXAMINER	
SWANSON & BRATSCHUN L.L.C. 1745 SHEA CENTER DRIVE SUITE 330 HIGHLANDS RANCH, CO 80129			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/713,494
Filing Date: November 14, 2003
Appellant(s): MILLER ET AL.

James L. Brown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 13, 2006
appealing from the Office action mailed September 12, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,353,943	Stevens	03/2002
Des. 370,528	Kiester	06/1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens. The Stevens reference discloses a bathing apparatus comprising: a flexible sheet 52; attachment means 54; and connecting means 72, as claimed. Re claim 1, the initial statement of intended use (bathing vessel), and all other functional implications related thereto (lns. 3-4), have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by Stevens.

Claims 1-5, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens and Kiester. Although the connecting means of the Stevens bathing apparatus does not include a strap, as claimed, attention is directed to the Kiester reference which discloses an analogous bathing apparatus which further includes connecting means having a strap (Fig. 5). Therefore, in consideration of Kiester, it would have been obvious to one of ordinary skill in the connecting means art to

Art Unit: 3751

associate a strap with the Stevens bathing apparatus in order to facilitate attachment.

(10) Response to Argument (headings as provided in appellant's brief)

(B) (2)

Appellant's argue at pages 5-6 of the brief the connecting means of the Stevens bathing apparatus does not removably connect the attachment means to the flexible sheet. The examiner can not agree. As clearly identified supra, the flexible sheet 52 of Stevens is attached to a bathing vessel 65 via suction cups 54 or attachment means. The attachment of each of the suction cups to the sheet is effected by provision of a stem or post 75 which is passed through a hole or perforation 71 in the sheet and retained therein "by any means known in the art" such as a backing element or flange 72. The stem or post 75 and backing element or flange 72 therefore perform the function of connecting each suction cup to the sheet. Furthermore, the stem or post, even with the backing element or flange fused or welded thereto, is capable of being removed from the sheet by merely applying force to the suction cup. In this regard, the suction cups are resilient (col. 4 lns. 14-15), and the sheet is constructed of terry cloth or other substantially flexible material (col. 2 lns. 6-7). This connection taught by

Art Unit: 3751

Stevens is not functionally different than the strap type connection contemplated in appellants' disclosure since the illustrated straps 4 connect the suction cups to the flexible sheet 2 by being passed through holes or slots 6 in the sheet. The broad and functionally descriptive term "removably" associated with the claimed connecting means does not impart any structure over that disclosed by Stevens. Indeed, appellants' specification also describes the claimed attachment means as encompassing many different structures as accurately noted at page 3 of the brief. Further in this regard, a strap is merely given as an example of one type of connecting means that can be used with appellants' disclosed invention. Appellant's argue at pages 6-7 of the brief the additional embodiment illustrated by Stevens of connecting the sheet to the bathing vessel via hook and loop fasteners is not equivalent to the claimed connecting means. Again, the examiner can not agree. In this regard, appellant's characterize one of the plates 80,82 as the claimed attachment means and connecting means. To the contrary, Stevens clearly teaches a loop plate 82 attached to the bathing vessel, a hook plate 80 attached to the sheet, and hooks and loops (illustrated) which inherently removably connect the two plates. Appellant's argue at page 7 of the brief the functional language "for attaching the flexible sheet to a surface of the bathing

vessel such that the flexible sheet is substantially in contact with the bottom surface of the bathing vessel" defines both structure of the attachment means and use of the sheet which are distinguishable from that of Stevens. The examiner can not agree as the sheet and attachment means disclosed by Stevens clearly are capable of performing the recited function(s). This conclusion is buttressed by appellants' specification at paragraph 19 where the disclosed sheet is taught as being capable of uses other than the argued use of being "attached to a bottom surface of the bathing vessel below the water level."

(C) (2)

Appellant's argue at page 10 of the brief that even though the combined disclosures of Stevens and Kiester teach all the claimed elements, the straps (connecting means) taught by Kiester are not expressly illustrated as removable. The examiner can not agree as Kiester clearly illustrates "snap fittings" as acknowledged by appellant's. Indeed, such snap fittings are at least equivalent to the structure appellant's disclose as being usable to form the claimed straps into a loop (see page 3 of the brief, for example). Appellant's argue at pages 10-11 of the brief there is no motivation for providing the connecting means disclosed by Kiester with the attachment means disclosed by Stevens because the embodiment of the

Art Unit: 3751

connecting means illustrated in Stevens is not "releasable" (presumably removable). The examiner can not agree. The removability (e.g. ability to be removed) of the Stevens connecting means is addressed supra. In any event, the plain language in Stevens teaching use of alternative connecting means (as acknowledged by appellant's) does not state such alternatives are limited to methods of "rigidly (not releasably) securing a suction cup to a fabric sheet" as argued. Further in this regard, attention is directed to lines 4-7 in column 5 of Stevens which also provide "motivation" for one skilled in the art to modify the Stevens invention.

(C) (3)

Appellant's arguments at pages 11-12 of the brief are noted. Appellant's rely upon evidence of U.S Patent 5,491,850 ('850) in support of this line of argument. However, this patent has not been properly cited in the record of the instant application. This patent can not now be relied upon as evidence, even though reference thereto may have been made in the background art section of the instant specification. See 37 CFR 41.33(d)(2). In any event, the '850 patent was not relied upon by the examiner to anticipate claim 1 as appellants' arguments may suggest.

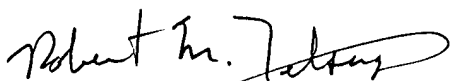
(11) Related Proceeding(s) Appendix

Art Unit: 3751

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

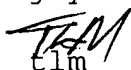
Respectfully submitted,



Robert M. Fetsuga

Conferees:

jry


tlm
JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700